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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 RODOLFO A. CONTRERAS, ) Case No.: 1:19-cv-01785-JLT (HC)  
12 )  
13 Petitioner, ) ORDER DISMISSING PETITION WITH LEAVE  
14 ) TO FILE A FIRST AMENDED PETITION  
15 v. )  
16 PEOPLE OF THE STATE OF CALIFORNIA, ) [THIRTY-DAY DEADLINE]  
17 )  
18 Respondent. )  
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17 Petitioner filed a Petition for Writ of Habeas Corpus on December 23, 2019. A preliminary  
18 screening of the petition reveals that the petition fails to name the proper respondent. Therefore, the  
19 Court will DISMISS the petition with leave to file an amended petition.

20 **I. DISCUSSION**

21 A. Preliminary Review of Petition

22 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary  
23 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it  
24 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in  
25 the district court . . . .” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory  
26 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,  
27 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an  
28 answer to the petition has been filed.

1           B. Failure to Name a Proper Respondent

2           A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer  
3 having custody of him as the respondent to the petition. Rule 2(a) of the Rules Governing § 2254  
4 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme  
5 Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated  
6 petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has  
7 "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.  
8 1992); see also Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions  
9 is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation  
10 or parole, the proper respondent is his probation or parole officer and the official in charge of the  
11 parole or probation agency or state correctional agency. Id.

12           In this case, Petitioner names "People of the State of California" as the Respondent. However,  
13 People of the State of California is not the warden or chief officer of the institution where Petitioner is  
14 confined, and, thus, does not have day-to-day control over Petitioner. Petitioner is presently confined  
15 at the California Correctional Institution. The current director or warden of that facility is the person  
16 Petitioner should name as Respondent.

17           Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for  
18 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326  
19 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).  
20 However, the Court will give Petitioner the opportunity to cure this defect by amending the petition to  
21 name a proper respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d 1026,  
22 1029 (5th Cir. 1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir. 1975) (en banc)  
23 (allowing petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394  
24 F.2d 125 (9th Cir. 1968) (same). In any amended petition, Petitioner must name a proper respondent.

25           Petitioner will be granted an opportunity to file a First Amended Petition to cure this  
26 deficiency. Petitioner is advised that he should entitle his pleading, "First Amended Petition," and he  
27 should reference the instant case number. Failure to comply with this order will result in dismissal of  
28 the action.

1 **II. ORDER**

2 Accordingly, the Court **ORDERS**:

- 3 1) The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE for  
4 failure to name a proper respondent; and  
5 2) Petitioner is GRANTED thirty days from the date of service of this order to file a First  
6 Amended Petition. The First Amended Petition SHALL name the warden at the prison  
7 where Petitioner is housed as the only respondent in the action.  
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9 IT IS SO ORDERED.

10 Dated: **January 22, 2020**

**/s/ Jennifer L. Thurston**  
UNITED STATES MAGISTRATE JUDGE